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UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

DAVID WAITS,)
)
Plaintiff,)
)
vs.)
)
DARRIN RAY HESS, IN PERSONAM)
and F/V NOR GALE IN REM,)
)
Defendants.)
_____) Case No.

SEAMAN'S ACTION PURSUANT TO 28 USC § 1916
UNSEAWORTHINESS/JONES ACT NEGLIGENCE

COMES NOW the plaintiff, DAVID WAITS, by and through his attorneys, Barber & Associates, LLC, and for his complaint against the defendants DARRIN RAY HESS, personally, and the vessel F/V NOR GALE, *in rem*, does state and allege as follows:

1. This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears filed pursuant to Federal Civil Rule 9(h) and 28 U.S.C. § 1333(1).
2. That at all times material hereto, plaintiff is an injured seaman excepted from requirement of the payment of fees and costs pursuant to 28 U.S.C. § 1916.

3. On information and belief, defendant Darrin Hess was doing business in the State of Alaska at all relevant times and is subject to the jurisdiction of this Court.

4. On information and belief, defendant Darrin Hess was at all times relevant hereto, the owner of F/V Nor Gale.

5. On information and belief, defendant Darrin Hess operated the vessel, individually, and as a joint venture with the crew working as ordered.

6. In the Summer of 2016, plaintiff was hired as a crew member of the F/V Nor Gale to be paid a 17.5% crew share.

7. The F/V Nor Gale was inadequately equipped to safely run gear during rough seas.

8. On or about August 20, 2016, the plaintiff was ordered to run gear on the F/V Nor Gale during rough seas in Icy Strait and a fishhook pierced his second finger on his right hand causing injury.

9. The defendant Darrin Hess failed to reasonably treat the plaintiff's injury or promptly return to shore which aggravated the injury.

10. As a seaman, plaintiff was entitled to the protections of the Jones Act, 46 U.S.C. § 30104, and further entitled to a warranty of seaworthiness as to the F/V Nor Gale by the defendant Darrin Hess.

11. The plaintiff's injuries were proximately caused by conditions that rendered the F/V Nor Gale unseaworthy and constituted a breach of defendant Darrin Hess' duty to

provide a seaworthy vessel, including but not limited to equipment and sufficient crew to run gear safely and without injury during rough seas.

12. An additional proximate cause of plaintiff's injuries was the negligence of the vessel skipper and crew in breaching their duties to properly prevent unseaworthy conditions or to address the problems caused by such conditions, including but not limited to the failure of the crew to address the absence of equipment and a procedure for safely running gear during rough seas without injury.

13. As a result of the unseaworthy gear and vessel negligence, plaintiff suffered injury to his hand.

14. The injuries to the plaintiff have resulted in damages to him including, without limitation, lost earnings, diminished earning capacity, past and future medical expenses, and past and future pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic loss.

FIRST CAUSE OF ACTION (Unseaworthiness)

15. The plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1 through 14 of this Complaint.

16. The vessel's owner, Darrin Hess, had an absolute and non-delegable duty to maintain the F/V Nor Gale in a seaworthy condition.

17. The plaintiff's injuries and losses resulted from unseaworthy conditions on

the F/V Nor Gale such that the defendants are liable to plaintiff for said injuries and losses in amounts to be proven at trial, but in no event less than \$100,000.

**SECOND CAUSE OF ACTION
(Jones Act Negligence)**

18. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs 1 through 17 of this Complaint.

19. The injuries to the plaintiff resulted from the breach of the duty of care owed to him under the Jones Act, 46 U.S.C.A. § 30104, and/or under general maritime law. As a result of said negligence, the plaintiff suffered injuries and losses as described above, and defendants are liable to him in amounts to be proven at trial, but in no event less than \$100,000.

**THIRD CAUSE OF ACTION
(F/V Nor Gale *in rem*)**

20. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs 1 through 19 of this Complaint.

21. As the vessel on which the plaintiff was working at the time of his injury, the F/V Nor Gale is liable *in rem* for plaintiff's losses.

**FOURTH CAUSE OF ACTION
(Unpaid Maintenance and Cure)**

22. Plaintiff realleges and incorporates herein by reference the allegations of paragraphs 1 through 21 of this Complaint.

23. As a result of plaintiff's injury while in the service of F/V Nor Gale, defendant Darrin Hess had an absolute duty to pay Maintenance and the medical expenses associated with plaintiff's injuries, otherwise known as "Cure."

PRAYER FOR RELIEF

Wherefore, plaintiff requests the following relief:

1. A judgment against defendant Darrin Hess for unpaid Maintenance and Cure, including but not limited to punitive damages for the failure to make such payments in a timely manner.

2. A judgment against defendant Darrin Hess for damages due to vessel unseaworthiness and Jones Act negligence.

3. For the issuance of an in rem warrant and arrest instructing the United States Marshal to arrest F/V Nor Gale, its engines, tackle, gear, and appurtenances and to detain the vessel in his custody subject to further order of the Court.

4. For judgment in rem in favor of plaintiff against F/V Nor Gale, foreclosing his maritime lien for maritime tort in an amount to be proven at trial for plaintiff's damages, together with interest, cost, and attorney fees, said judgment to have priority over all other liens and mortgages.

5. For an Order directing the United States Marshall to sell F/V Nor Gale, its engines, tackle, gear, and appurtenances, and all other necessaries appertaining and belonging to the vessel and directing the disbursement of the proceeds in the first instance

to plaintiff to the extent necessary to satisfy his judgment against Defendant.

6. Plaintiff's reasonable costs and attorney's fees.
7. Such other relief as the Court deems appropriate.

DATED at Anchorage, Alaska this 1st day of May, 2018.

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